

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MAUREEN PIEKANSKI

Plaintiff,

v.

ALEX M. AZAR II, in his official
capacity as Secretary of the United
States Department of Health and
Human Services,

Defendant.

No. 3:20-CV-00687

(HON. MARTIN CARLSON)

(Electronically Filed)

**DEFENDANT’S REPLY IN SUPPORT OF HIS
MOTION TO STAY PROCEEDINGS**

I. INTRODUCTION

As noted in the Secretary’s motion to dismiss, Plaintiff lacks Article III standing under Supreme Court and Third Circuit law. Because this case cannot proceed without jurisdiction, summary judgment briefing would be a waste of the parties’ and judicial resources. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998); *Star Ins. Co. v. Treible’s Wrecker Service, Inc.*, 2013 WL 5603578, at *5 (M.D. Pa. Oct. 11, 2013) (Mariani, J.). Meanwhile, a brief stay would not prejudice Plaintiff, who has no financial interest in this lawsuit and fails to identify any circumstances that warrant a ruling on the merits before the Court has first

assured itself of jurisdiction. Accordingly, the Secretary respectfully requests that the Court stay all proceedings until after resolution of its motion to dismiss.

II. ARGUMENT

Plaintiff's Opposition utterly fails to respond to the litany of authority in the Secretary's moving brief holding that summary judgment motions should be stayed pending resolution of motions to dismiss for lack of jurisdiction. *See* Defendant's Mem. of Law [Dkt. No. 32-2] ("D. Mem.") at 4-7. Plaintiff, meanwhile, relies upon an inapposite case regarding the standard required for the Third Circuit to issue a writ of mandamus staying district courts from proceeding to trial. *Gold v. Johns-Mansville Sales Corp.*, 723 F.2d 1068, 1074-76 (3d Cir. 1983). In contrast, the Secretary's motion to stay only implicates this Court's inherent authority to control its own docket. D. Mem. at 4.

Furthermore, Plaintiff fails to show that she would suffer any meaningful prejudice if a brief stay were issued. Although Plaintiff is suffering from a deadly disease, the outcome of this case will not affect the availability of her treatment. Indeed, Plaintiff alleges that Medicare has covered her recent TTFT claims. First Amended Complaint ¶¶ 20-30. There is also no evidence that Plaintiff's health has deteriorated or would deteriorate during the pendency of a stay. The Secretary acted quickly by filing his motion to dismiss less than a month after Plaintiff filed

her First Amended Complaint. Plaintiff is solely responsible for any previous delay caused by her choice to erroneously file in the District of Columbia.

CONCLUSION

For foregoing reasons, the Secretary respectfully requests that the Court stay all proceedings, and order that the Secretary respond to Plaintiff's motion for summary judgment within 14 days following any denial of the Secretary's motion to dismiss.

Respectfully submitted,

DAVID J. FREED
United States Attorney

/s/ Eric S. Wolfish
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Dated: August 6, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this date, a true and correct copy of the foregoing
Reply in Support of Defendant's Motion to Stay was filed and served upon all
counsel of record through the Court's CM/ECF system.

/s/ Eric S. Wolfish
ERIC S. WOLFISH
Special Assistant United States Attorney

Dated: August 6, 2020